

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DEN:POSTF-127366-02

PJSewell

date: August 7, 2002

to: Pam Norton, LMSB 1292
Attn: Samantha Yun

from: Area Counsel
(Natural Resources:Houston)

subject: **Request for LMSB Division Counsel Assistance - Consent to Extend
the Statute of Limitations**

[REDACTED]
EIN: [REDACTED]
[REDACTED]

This memorandum supersedes our advice to you dated July 1, 2002 based upon modifications proposed by the National Office. This memorandum should not be cited as precedent.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUE

Who is the proper party to execute Form 872, Consent to Extend the Time to Assess Tax, for [REDACTED] consolidated group for the taxable year ending January 30, [REDACTED]?

CONCLUSION

Even though [REDACTED] is no longer the common parent of the consolidated group, [REDACTED] should extend the statute of limitations for assessment and collection for the tax year at issue as an alternative agent

under Temp. Reg. §1.1502-77T(a)(4)(i) because it is still in existence. The caption on Form 872 should read:

[REDACTED] ([REDACTED]) as alternative agent under Treas. Reg. § 1.1502-77T for the members of the [REDACTED] consolidated group ([REDACTED]).*

Put an asterisk after the EIN for [REDACTED]. On the face of the Form 872, include the following language:

* This is with respect to the federal income tax liabilities of [REDACTED] ([REDACTED]) for the tax year ending January 30, [REDACTED].

FACTS

I have relied on the facts set out in this memorandum for my opinion in this case. If you believe that I should consider additional facts, you should notify me as this could change my opinion.

[REDACTED] was the common parent of, and filed a consolidated return for, the [REDACTED] ([REDACTED]) consolidated group for the taxable year ending January 30, [REDACTED].

On [REDACTED], [REDACTED], a company organized under the laws of [REDACTED], purchased all outstanding shares of [REDACTED] through its merger subsidiary, [REDACTED]. [REDACTED], a wholly owned subsidiary of [REDACTED] ([REDACTED]),¹ merged with and into [REDACTED] in a reverse triangular merger. The separate corporate existence of [REDACTED] ceased. [REDACTED] survived the merger as a wholly owned subsidiary of [REDACTED].

LEGAL DISCUSSION

[REDACTED] is an alternative agent under Temp. Reg. §1.1502-77T(a)(4)(i) for the [REDACTED] consolidated group for the group's tax year

¹ [REDACTED] is a wholly owned subsidiary of [REDACTED] and the common parent of [REDACTED]'s U.S. interests.

ending January 30, [REDACTED] because it was the common parent of the group for all of the year (even though it is no longer the common parent of the group) to which the waiver applies and it continues in existence at the time the waiver is executed. As such, the consent should be prepared and executed as follows:

[REDACTED] ([REDACTED]) as alternative agent under Treas. Reg. § 1.1502-77T for the members of the [REDACTED] consolidated group ([REDACTED]).*

Put an asterisk after the EIN for [REDACTED]. On the face of the Form 872, you should include the following language:

* This is with respect to the federal income tax liabilities of [REDACTED] ([REDACTED]) for the tax year ending January 30, [REDACTED].

With regard to the address to be used on the Form 872, you should use the current address of [REDACTED] if it varies from the address shown on the return for the tax year ending January 30, [REDACTED]. See IRM 25.6.22.5.4.

We further remind you that you must notify the taxpayer of its right to 1) refuse to extend the period of limitations, or 2) limit the extension to a particular issue, or 3) limit the extension to a particular period of time. Further, it is suggested that you secure consents to extend statutes of limitation by sending Letter 907(DO). In addition, you should provide the taxpayer with Publication 1035.

If you have any questions on this matter, please call me at (303) 844-2214 ext. 224.

DAVID J. MUNGO
Associate Area Counsel (LMSB)

By: _____
PAMELA J. SEWELL
Attorney (LMSB)